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ABSTRACT

This report to the United Nations Committee on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the U.N. Convention on the Rights of the Child by the Federation of Nigeria. The report's introduction asserts that the rule by decree of Nigeria's present military regime has serious implications for human rights, and that the most fundamental recommendation of any report seeking to further the interests of the rights of Nigerian children must be a return to democratic civilian rule. The report then presents observations and recommendations in the following areas: (1) the definition of a child; (2) criminal responsibility; (3) the practice of torture; (4) the use of corporal punishment as a punitive measure; (5) physical chastisement of the child in the home; (6) punishment on a gender discriminatory basis; (7) death penalty and life imprisonment; (8) summary execution; (9) arrest and detention; (10) special arbitrary detention measures; (11) detention in prison; (12) children in need of protection outside the familial environment; (13) administration of juvenile justice; and (14) de facto conditions for "Almajiris," a practice which consists of parents entrusting their children to strangers for religious teaching (these strangers then force the children to be beggars.) The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Nigeria, in the following areas: positive factors, factors and difficulties impeding the implementation of the convention, principal subjects of concern, and suggestions and recommendations. (EV)

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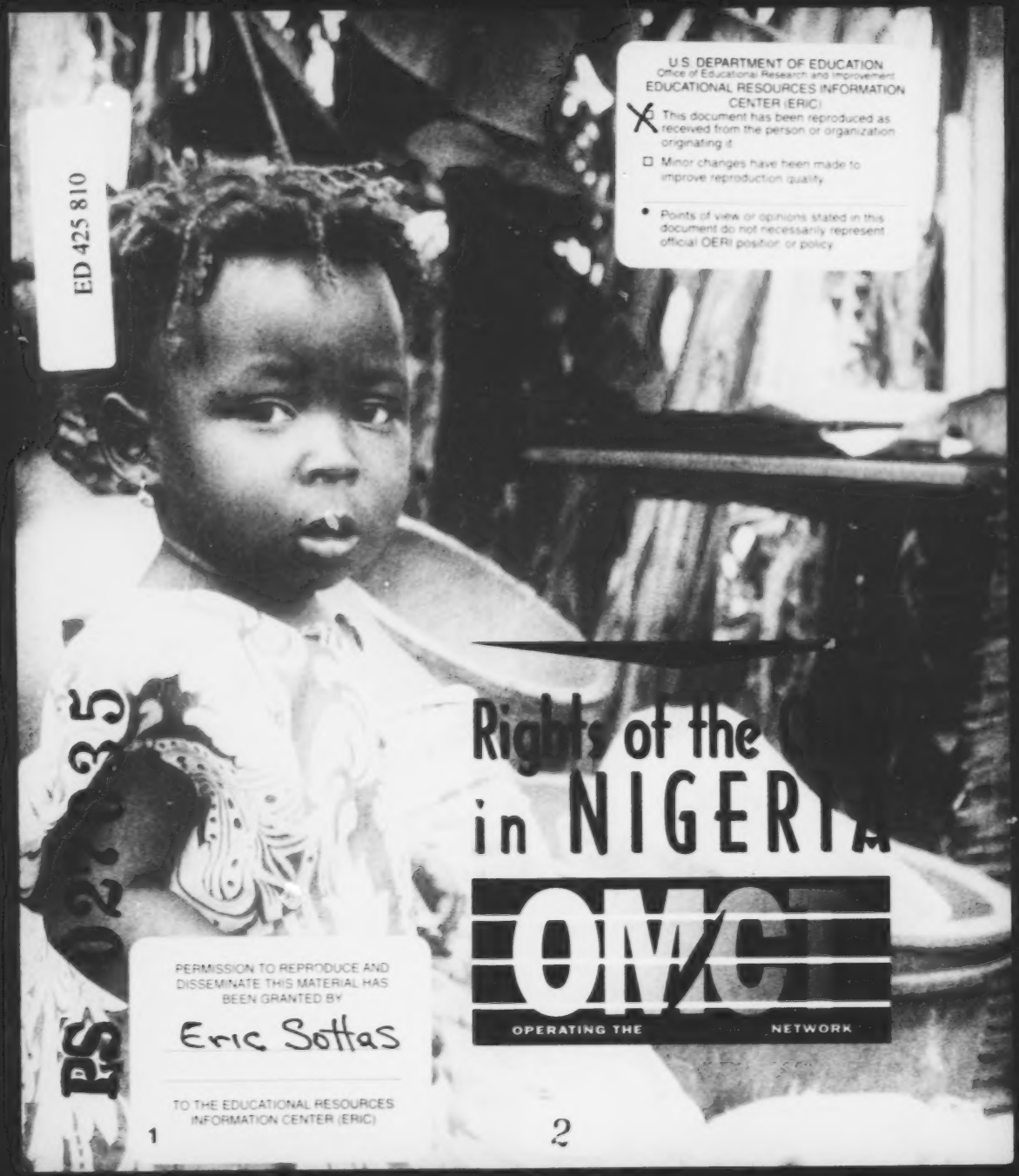

Rights of the Child in NIGERIA

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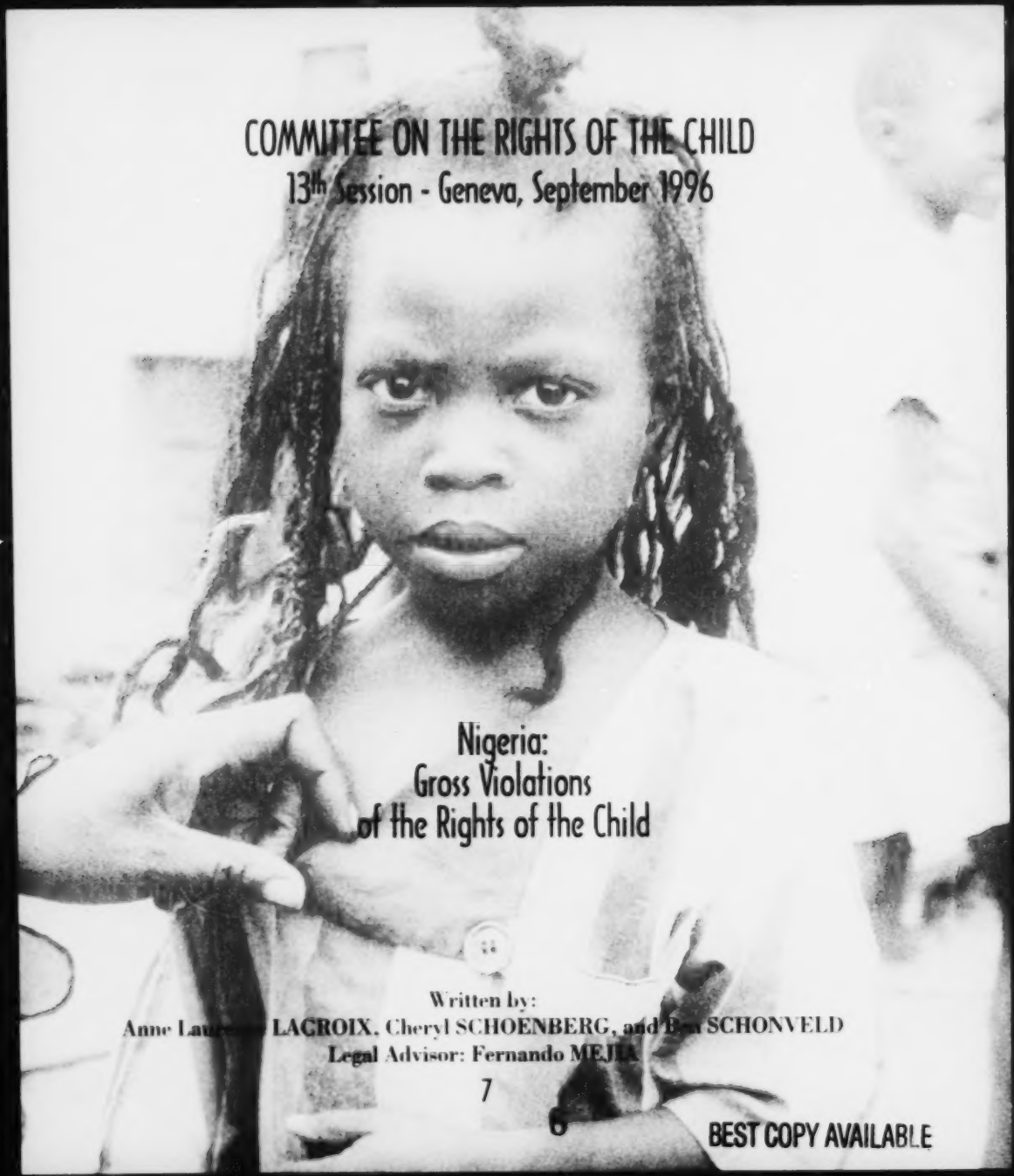

COMMITTEE ON THE RIGHTS OF THE CHILD

13th Session - Geneva, September 1996

Nigeria:
Gross Violations
of the Rights of the Child

Written by:

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For a considerable number of years the state of Nigeria has been the focus of criticism for its human rights record. Although cases such as the execution of human rights activist Ken Sara Wiwa have been a consistent feature of the international press, the rights of Nigerian children during the period have unfortunately received little attention.

The country has been subject to innumerable crises and as is always the case in such times, children face enormous risks.

The present military regime headed by General Abacha, the most recent leader in a long succession of military coups, has continued a tradition of rule by decree. These decrees which supersede all other legislation, including the Nigerian Constitution, lie diametrically opposed to international human rights law and present particular threats to the rights of Nigerian children.

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International Obligations

The Federation of Nigeria ratified the Convention on the Rights of the Child in March 1991. Nigeria has also ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. Nigeria has signed, but not ratified the Convention Against Torture and other cruel, inhuman, or degrading treatment or punishment.

Domestic measures

Domestic protection for human rights are outlined in Chapter IV of the 1979 Constitution. However, the present military regime, as with other regimes in the past, has amended and suspended the Constitution in a series of decrees. All laws including the Constitution, are subordinate to decree.

These decrees have serious implications for human rights. In particular, the Constitution (suspension and modification) Decree No 1 of 1984, which effectively suspends the human rights provisions of the Constitution. It has particular implications for the rights of the child. Equally, as will be seen, the State Security (Detention of Persons) decree presents a particularly dangerous threat to the rights of Nigerian Children.

The most fundamental recommendation of any report seeking to further the interests of the rights of Nigerian children must be a return to democratic civilian rule.

The Definition of a Child [Art. 1]

Paragraph 31 of the State report states that "*a draft decree put into law has now set the age of the child in Nigeria as 18 years or below.*" Decree No 1071993. The 1984 Constitution (Suspension and Modification) specifies very clearly that all existing laws, including the constitution are subordinate to executive decree.

Thus, at least at first glance, the Draft Decree would appear to carry particular weight with regard to the protection of children.

However, OMCT feels very strongly that rule by decree is fundamentally opposed to the best interests of the child and urges the Committee to request that the government provide concrete information on the return to the rule of law; the only process which can lead to a genuine implementation of Nigeria's international obligations.

OMCT feels that clarification of the implications of this decree is central to an understanding of the government's implementation of the Convention and would encourage the Committee to deal with this issue at a very early stage.

Existing Legislation Concerning the Age of a Child

The need for clarification of the above decree becomes very clear when an investigation of current legislation regarding the age of a child is undertaken.

Section 2 of the Children and Young Persons Law (1958) of the Federation of Nigeria and Lagos defines a "*child*" as "*a person under the age of fourteen years.*" The National Child Welfare Policy of 1989 defines a child "*as anybody who is 12 years or below.*" Furthermore, section 2 of the Children and Young Persons Law (1958) of the Federation of Nigeria and Lagos defines a "*young person*" as "*a person who has attained the age of fourteen years and is under the age of seventeen years.*"

Moreover, section 208 of the Criminal Procedure code states that:
"*Where a person is before any court and it appears to the court that such person is an infant, or a child, or a young person, (...)*"

OMCT is concerned that the diverse definitions contained in the various legislation and the implied uncertainty over the age of a child, is unlikely to be in the best interests of the child. OMCT is concerned that the laws could be subject to abuse and have a consequent negative impact on protection of the rights of children.

OMCT would urge the Committee to request that the government provide further clarification of the age limits of a child in Nigeria

Furthermore, paragraph § 39 of the State report states that "*there are cultural constraints arising from respect for age and experience which do not always place the best interests of the child above all considerations.*"

OMCT is concerned about the implications of this statement and would invite the government to provide more information on what these cultural constraints are.

Criminal Responsibility [Art. 40.3.a]

Domestic Considerations

Section 50 of the Penal Code states that: "*No act is an offence which is done:*

(a) By a child under 7 years of age;

(b) By a child above 7 years but under 12 years of age who has not attained sufficient understanding to judge the nature and consequence of such an act."

Section 30 of the Criminal Code provides: "*A person under the age of twelve years is not criminally responsible for any act or omission unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.*"

Observations

OMCT believes that the age established by Nigerian legislation for criminal responsibility is unacceptably low.

OMCT is concerned that the establishment, as to whether a child is capable of understanding the nature of his/her crime to a court judge, may result in prosecution based on discrimination.

What is perhaps more worrying is the existence of attitudes of discrimination with reference to street children, minority children and male children who all may be subject to discrimination in this regard.

OMCT would urge the Committee to request that the government provide further information on the age of penal responsibility in Nigeria.

The Practice of Torture [Art. 37.a]

In addition, the numerous reports of torture received by OMCT clearly demonstrate that the practice of torture is widespread. Although legislative provisions including that of the Constitution exist to protect against such practices, they are treated de facto, in the words of the Civil Liberties Organisation report, "*The Nigerian Police and Civil Liberties*" and "*with levity.*"

Torture is common and routine. Beating is the most common method, with batons used on the knuckles, ankles, knee caps and elbow joints. Similarly, threats of perpetual detention are made to extract confessions. It is clear that few people are aware of their rights and this has only added to the powers of the perpetrators of such crimes. Children have not escaped from these practices.

Domestic Legislative Measures:

The legislative provisions regarding the practice of torture are the following:
Paragraph 50 of the State report confirms that section 31 of the 1979 Constitution states:
"*(a) The child shall not be subjected to any form of torture or to inhuman or degrading treatment;*"

while section 31 of the 1979 Nigerian Constitution ensures that:

(1) "*Every individual is entitled to respect for the dignity of his person, and accordingly — (a) no person shall be subjected to torture or to inhuman or degrading treatment; (...)*"

International Commitments

In the report to the Committee on Human Rights (CRC/C/8/Add.26, § 44), Nigeria states that:
"*Legislative and other measures have been put in place to ensure the enforcement of this constitutional principle. (...) With respect to the human dignity of persons in detention, the Nigerian constitution has adequate provision against any form of torture.*"

Although Nigeria is not a State party to the Convention against Torture, it has ratified the International Covenant on Civil and Political Rights which foresees, in article 7, that:
"*No one shall be subjected to torture or to cruel, inhuman or degrading treatment of punishment. (...)*"

Observations

Despite these commitments, neither the Nigerian Constitution, nor the Criminal Code nor the Children and Young Persons Law contain a definition of torture.

Furthermore, the reference made to prevention of torture in the Nigerian Constitution makes no reference to psychological torture.

Recommendations

OMCT would urge the Committee to request that the what concrete measures the Government is planning to implement to prevent what is, de facto, a serious problem facing children in Nigeria.

OMCT feels that it is important that the Committee obtain from the Nigerian Government further information on the "*legislative and other measures*" in place for the protection of "*every individual*" against torture, and more specifically of children and young persons.

OMCT would urge the Committee to encourage the government to ratify the Convention Against Torture which it has already signed.

OMCT would like further information as to whether the Government is planning to amend the Constitution to contain a clear

definition of torture for the better protection of all its citizens, and outline particular measures for the protection of children taking into consideration the special protection of children necessary as a result of their age.

The Use of Corporal Punishment as a Punitive Measure

Domestic Legislation

OMCT is concerned by section 11 of the Children and Young Persons Law which provides that:

"No young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution, or otherwise."

Moreover, section 14 of the same law provides that:

"Where a child or a young person charged with any offence is tried by a court, and the court is satisfied by his guilt, the court shall take into consideration the manner in which under the provisions of this or any other Ordinance the case should be dealt with, namely, whether -

(f) by ordering the offender to be whipped;"

Regarding children in conflict with the law, section 18 of the Criminal Code states that:

"Whenever a male person who in the opinion of the Court has not attained seventeen years of age has been found guilty of any offence the Court may, in its discretion, order him to be whipped in addition to or in substitution for any punishments to which he is liable."

International Commitments

OMCT is deeply concerned by these provisions because they conflict in both the spirit and the letter of article 37(a) of the Convention on the Rights of the Child which states:

"No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Recommendations

OMCT requests the Committee to put forward the following questions:

When is the Government planning to outlaw the whipping of boys contained within section 18 of the Criminal Code?

Is the Nigerian Government considering amending both section 11 and section 14 of the Children's and Young Persons Law which are clearly contrary to the Convention on the Rights of the Child?

Physical Chastisement of the Child in the Home

Domestic Legislation

Section 295 of the Nigerian Criminal Code allows for the correction of the child:

"*A blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction as follows:*

(1) a father or mother may correct his or her legitimate or illegitimate child, being under 16 years of age, or any guardian or person acting as a guardian, is ward, being under 16 years of age, for misconduct or disobedience to any lawful command;

(4) a father or mother or guardian, or any person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; (...)"

"*Grievous harm*" as used in the Criminal Code is defined as: *(...) any harm which amounts to a maim or dangerous harm as defined in this section, or which seriously or permanently injures health, or which is likely to injure health, or which extends to permanent disfigu-*

rement or to any permanent or serious injury to any external or internal organ, member, or sense."

Observations

OMCT believes that the definition of "*grievous harm*", is vague. It leaves too much latitude to the correction of a child. The Committee's position regarding the use of corporal punishment as a corrective measure is clear — such practices are unacceptable.

OMCT is also concerned in this regard that the Report makes no reference to the practice of corporal punishment within schools and other institutions.

Recommendations

The use of corporal punishment in the home is unacceptable and OMCT would urge the Committee to take the issue up with the government.

OMCT would urge that the Government present the Committee with further information on the use of corporal punishment as a pedagogical tool within schools and other institutions.

Punishment on a Gender Discriminatory Basis [Art. 42]

Domestic Legislation

The marriageable age differs on whether marriage is contracted under the Marriage Act or under Customary Law. While there exists a tacit adoption of twenty-one years as the age of majority for marriage purposes (Marriage Act), customary law has no minimum age of marriage. The absence of a minimum age in customary law presents a problem as section 218 of the Criminal Code states: "*Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life with or without whipping. Any person who attempts to have unlawful carnal knowledge of a girl under the age of thirteen*

years is guilty of a felony, and is liable to imprisonment for fourteen years with or without whipping. (...)"

Section 357 of the Criminal Code states: *"Any person who has unlawful carnal knowledge of a woman or girl without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by mean of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape."*

While section 6 of the same Code states: *"When the term 'carnal knowledge' or the term 'carnal connection' is used in defining an offence, it is implied that the offence, so far as regards that element of it, is complete upon penetration.*
'Unlawful carnal knowledge' means carnal connection which takes place otherwise than between husband and wife."

Observations

OMCT is deeply concerned by these articles, according to the criminal code, sexual intercourse between husband and wife is not considered rape, even if the wife is under thirteen years old. OMCT wonders as to the status of the girl child once a girl under the age of fourteen is married. Does she cease to be considered a child in the eyes of the law?

This is all the more disturbing when in some parts of the country child marriage takes place when the girl is under ten years old.

Recommendations

OMCT requests that the Committee query the Nigerian Government on:
What measures the Government is taking to raise the de jure and de facto age of marriage which currently put the girl child at high risk of abuse.

When the government is planning to introduce a law which punishes marital rape.

Other Gender Discriminatory Provisions

Furthermore, OMCT is concerned by the gender-discrimination inherent in other sections of the criminal code in particular the differentiation in punishment for indecent assault of a boy or a girl.

Section 216 of the Criminal Code states: "*Any person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years (…)*".

The term "*deal with*" includes doing any act which, if done without consent, would constitute an assault as hereinafter defined. (See section 217)

While section 222 states:
"*Any person who unlawfully and indecently deals with a girl under the age of sixteen years is guilty of a misdemeanour, and is liable to imprisonment for two years, with or without whipping.*
If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years, with or without whipping."

Observations

While the crime of indecent assault can equally be committed against a boy or a girl, OMCT questions why the age of the victim differs between the two genders.

OMCT is also concerned about the unequal prison terms to which a person is sentenced depending on the sex of the victim.

These stipulations are manifestly in flagrant contradiction with the CRC notably articles 2 and 34.

Recommendations

OMCT would urge the Committee to request further information on issues raised by the above section particularly the need to ensure that those who commit crimes of rape against a female child are equally punished to those who rape a male child.

Death Penalty and Life Imprisonment

Paragraph 50 of the Nigerian report states that "*The child is not liable to capital punishment or life imprisonment for offences committed by him.*"

Domestic Legislation

OMCT is gravely concerned by Section 12 of the Children and Young Persons Law which provides:

"Sentence of death shall not be pronounced or recorded against any offender who has not attained the age of seventeen years, but in lieu thereof the court shall order such offender to be detained during Her Majesty's pleasure and if so ordered, the provisions of Part XLIV of the Criminal Procedure Ordinance shall apply."

OMCT notes that the current draft declaration sets the age of a child at 18.

OMCT is further concerned over the concept of *"Her Majesty's Pleasure"*. The remarks that OMCT presented in its report on the United Kingdom regarding a similar clause are relevant here: *"OMCT is concerned over such legislation and feels it would be appropriate to ask what guidelines exist concerning the Pleasure of Her Majesty. And furthermore, what access do defendants held at her Majesty's Pleasure have to appeal"* (Report to the CRC January 1995).

OMCT is particularly concerned by the vagueness of this stipulation which would in all likelihood invite abuse and feel it appropriate for the Government to provide concrete guidelines concerning *"Her Majesty's Pleasure."*

Recommendations

OMCT urges the Committee to request the Government: to provide concrete details over how current criminal legislation regarding life imprisonment is to be amended to bring it into line with the new age of the child.

If the government is planning to amend the appropriate sections of the criminal provisions ordinance to provide more clarity on the issue of detention on *"Her Majesty's Pleasure"* which could imply a serious violation of the rights of the child in terms of the psychological effect on the child imprisoned to perpetuity.

Summary Execution

The law enforcement agencies in any country enjoy enormous power which make them a particular threat if there is a lack of clarity, lack of constant monitoring and re-evaluation of their powers and guidelines. A child's right to life is sacrosanct, but in Nigeria the past 6 years have witnessed too many deaths of children.

While the prevailing socio-economic conditions, and the fact that police killings are rarely investigated, has to a greater extent contributed to these deaths, it is equally clear that certain legislative provisions have engendered an atmosphere of impunity.

Domestic Legislation

With regard to rioting, the Criminal Code has to be amended. It has been used with particular reference to the multiplicity of demonstrations of the Ogoni people and more recently the Muslim disturbances. The central concerns regarding children are:

Section 73 of the Criminal Code which states that:
"If upon the expiration of a reasonable time after such proclamation made, or after the making of such proclamation has been prevented by force, twelve or more persons continue riotously assembled together, any person authorised to make proclamation, or any police officer, or any other person acting in aide of such person or police officer, may do all things necessary for dispersing the persons so continuing assembled, or for apprehending them or any of them, and, if any person makes resistance, may use all such force as if reasonably necessary for overcoming such resistance, and shall not be liable in any criminal or civil proceeding for having, by the use of such force, caused harm or death to any person."

Observations

OMCT is deeply concerned by this provision. Firstly, it would appear to give excessive powers to the authorities and other people, under the pretext of *"law and order"* enabling them to take punitive measures. OMCT is particularly concerned by this measure in a society which does not enjoy stable economic, political and social relations.

Furthermore, this provision assures the impunity of the authors of grave violations and this provision is aggravated by the stipulation in section 306 of the Nigerian Criminal Code:

"It is unlawful to kill any person unless such killing is authorised or justified or excused by law."

It is clear that this legislation is used, as the following case makes clear.

On 4 January 1996, Lucky Gbarabe (12), Kpannem Nicodimus (13) and Barisi Deemua (14) were killed by soldiers and security officials during the fifth Ogoni Day celebration.

This year's occasion was the first time the Ogonis had an opportunity to gather in large numbers since the summary execution of nine of their people. During this celebration, the number of soldiers and other security operatives blocking the main roads leading to Ogoni villages had increased steadily. In the afternoon, the soldiers and security officials tried to disperse the crowd using live bullets, horsewhips, batons and cudgels.

During this confrontation, among those reportedly killed were:

- Lucky Gbarabe, a twelve year schoolboy, shot in the back of the head while trying to run away;

- Kpannem Nicodimus, a thirteen year old schoolboy from Gokana Local Government, shot in the lower abdomen. He was rushed to the University of Port Harcourt Teaching Hospital (UPTH) where he later died on January 6th, 1996;

- Barisi Deemua, a fourteen year old apprentice mechanic, shot in the neck. It is believed that he died from the wounds inflicted.

According to information received, all travellers to Ogoni from Port Harcourt were searched at check points. Many complained about extortions by soldiers who were posted permanently in the area. Cases of brutality were reported from villagers and other people using the road.

The current climate in Nigeria is unstable. There have been many riots and the situation is not improving. The

above provisions in the Criminal Code, confirmed by the deaths of these children, are contributory factors.

Recommendations

OMCT believes the following to be imperative.

Articles 73 and 306 should be immediately amended to provide improved protection for all peoples and in particular for children.

Ensure that the authors of grave violations of human rights are brought to justice and sentenced to a punishment appropriate to the nature of the crime.

Ensure that the surviving victims, particularly children, are provided with appropriate redress and rehabilitation.

Further ensure that the victims or their families have the rights to appropriate assistance and compensation.

Arrest and Detention [Art. 37 b]

The de facto conditions facing children in conflict with the law are extremely worrying. There would appear to be no attempt to separate children from other detainees. The only classification is according to gender. Unsanitary conditions, inappropriate medical facilities overcrowding and undernourishment are serious issues facing detained children. The threats to the physical and psychological integrity are grave. The 1993 CLO report "*The Nigerian Police and individual Liberties*" states:

"*At most detention centres, inmates with criminal records abuse and generally lord it over the other groups, especially the young and first offenders... The result is the continuous systematic brutalisation of the young and weaker detainees by hardened criminal suspects with the active support or tolerance of SHB men.*" [Page 15]

Domestic Considerations

De jure, OMCT is concerned that in addition to the problems presented by the issuance of decrees, although the

Constitution provides protection for the Child from arrest (section 32 of the 1979 stating that no person shall be deprived of his liberty except in the execution of a lawful order of a court or on reasonable suspicion of having committed a crime). However, provisions in the Criminal Procedure Code would appear to put children at particular risk of arbitrary arrest and detention.

Section 3 of the Children and Young Persons Law foresees that when a child is arrested:

"*with or without warrant, and cannot be brought forthwith before a court of summary jurisdiction, the police officer in immediate charge for the time being of the police station to which such person is brought, shall inquire into the case and may in any case, and shall-*

(a) unless the charge is one of homicide or other grave crime; or

(b) unless it is necessary in the interest of such persons to remove him from association with any reputed criminal or prostitute; or

(c) unless the officer has reason to believe that the release of such persons would defeat the ends of justice,

...release such persons on recognisance being entered into by him or by his parent or guardian, with or without sureties, for such an amount as will, in the opinion of the officer, secure the attendance of such person upon the hearing of the charge."

OMCT has several concerns:

1. OMCT must assume that if there is no "*recognisance*" or the child has no parent or guardian, then he/she will be detained by the authorities.

2. OMCT is concerned by the lack of clarity of the time provisions before the case is brought before a court or before the parent or guardian of the child is informed of his/her detention.

3. OMCT is very concerned by the latitude granted to the officer in article (c) which could entail risks to the child and queries what criteria are used to determine when the release of the child would, in effect, defeat the ends of justice.

There are further concerns regarding definition in Section 4 of the Children and Young Persons Law which foresees that:

"Where a person apparently under the age of seventeen years having been apprehended is not so released as aforesaid, the officer to whom such person is brought shall cause him to be detained in a place of detention provided under this Ordinance until he can be brought before a court unless the officer certifies-

(a) that he is impracticable to do so; or

(b) that he is of so unruly or deprived a character that he cannot be safely detained; or

(c) that by reason of his state of health or his mental or bodily condition it is inadvisable to detain him;

and the certificate shall be produced to the court before which the person is brought."

OMCT is concerned by:

1. the term "*impracticable*" is unclear;

2. The absence of a time constraint:

3. OMCT is concerned with section 3 as it gives considerable amount of leeway for the police officer.

A further concern for the child is found in Section 10(1) of the Criminal Procedure Act which states that the police are empowered to arrest without warrant under certain conditions. It states:

"10(1) Any police officer may without an order from a magistrate and without a warrant, arrest…
(i) any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself…"

OMCT is particularly concerned by this stipulation which it feels could be particularly discriminatory against children, who as a result of their age are not always in a position to give a satisfactory account of themselves and may be used in particular against street children.

Finally, OMCT is concerned by the total absence of clear guidelines and procedures in to children within arrest and

detention procedures. It is evident that the absence of such guidelines is a serious and open invitation to abuse, and even more so in a society that is so divided socially, politically and economically.

Recommendations

1. De facto conditions of detention centres must be improved.

2. Provision for the separation of children from other detainees must be found.

3. Clear guidelines and procedures must be outlined to provide clarity to arresting officers.

4. Section 3 and Section 4 of the Penal code should be amended to offer better protection for children.

5. It is also clear that further training and technical assistance should be found.

Special Arbitrary Detention Measures

Domestic Considerations

With regard to the protection of the child, it is important to underline the impact of the State Security Act 1984 (Detention of Persons) which takes precedence over all pre-existing legislation. It states: "*the authorities, are empowered to detain persons for up to three months without trial on the grounds of national security.*"

"*If the Chief of General staff is satisfied that any person is or recently has been concerned in acts prejudicial to state security has contributed to the economic adversity of the nation, or in the preparation or instigation of such acts; and that by reason thereof is necessary to exercise control over him, he may by order in writing direct that person be detained in a civil prison or police station or such other place specified by him; and it shall the duty of the person or persons in charge… to keep that person in custody until the order is revoked.*"

OMCT notes with particular reference to the Ogoni children who have often taken part in demonstrations regarding environmental rights: "contributing to the economic adversity of the nation"
The Act/Decree provides that no regular court can examine the legality of the detention.

Observations

OMCT is gravely concerned by this decree which presents a clear threat to the integrity of children. Many of the persons detained under this act have been Ogoni and equally what the government describes as "*vagabonds*".

There is no special protection offered to protect children from the stipulations of the decree, nor is there any mention of the need to separate children from other such detainees.

This decree lies in clear opposition to the stipulations of the Convention on the Rights of the Child and presents a clear and grave threat to the rights of Nigerian Children. We would ask the committee to urge the Government of Nigeria to abolish the State Security (Detention of Persons) Act 1984.

Detention in Prison

De facto Conditions

De facto conditions in Nigerian prisons are nothing short of appalling. Prisons are routinely overcrowded, so much so that according to many reports, prisoners often have to take turns to sleep. Conditions are unsanitary, disease rates are extremely high and medical facilities are inappropriate. Nutrition is insubstantial and there are numerous reports which suggest that this is in part due to corruption of the prison staff. The threats to the physical and psychological integrity in Prison are as grave as those in police detention. The "*pecking order*" system in prisons as well as in police detention centres places minors at extreme risk.

There would appear to be little effort to separate juveniles from other inmates and they appear to receive the same treatment. Rehabilitative measures are not apparent

Domestic Provision

Section 15(3) of the Child and Young Persons Law provides:
"Provided that if a child or young person be detained in a prison he shall not be allowed to associate with adults prisoners."

Observations

OMCT is gravely concerned by the current situation facing imprisoned juveniles who face particular health risks and an extreme risk to their physical and psychological integrity. OMCT wonders how detaining children under such circumstances can in any way be in conformity with the Convention on the Rights of the Child.

Recommendations

OMCT would urge the committee to request that the government outline what measures are being taken to ensure that juveniles are separated from adults while deprived of their liberty and what measures are being taken to ensure that they are being provided with appropriate measures to guarantee their psychological and physical integrity.

Further Legislative Issues

The legislation with regard to detention of juveniles highlights further issues:

Section 11 (1) of the Child and Young Persons Law states that:
"No child shall be ordered to be imprisoned."

However, section 15 (3) states that:
"Where no remand home is conveniently situated a child or young person ordered to be detained in custody may, in the discretion of the officer or the court, as the case may be, be detained in an approved institution or in a prison: Provided that if a child or young person be detained in a prison he shall not be allowed to associate with adults prisoners."

Observations

OMCT would request further clarification on the apparent contradiction in these two sections.

Moreover, an explanation should be given as to the differences that exist between a remand home, an approved institution and other places of detention, as mentioned throughout the Children and Young Persons Law.

According to the Convention on the Rights of the Child, detention or imprisonment of a child shall only be used as a measure of last resort and thus particular concern must be raised over section 14 (1) of the Child and Young Persons Law which gives options to dealing with a child or a young person in conflict with the law: "*(…) in any other manner in which it may be legally dealt with.*"

Since section 14 supplies many possibilities for dealing with children and young persons in conflict with the law, OMCT questions what the other "*manners*" are?

One of the possibilities mentioned in this section is the payment of a fine, damages or costs by the offender. OMCT is concerned particularly for children at the bottom end of the economic strata as to what alternative measures would be dealt to a child or a young person who could not pay the sums required.

Section 21 of the Children and Young Persons Law says that no person of 16 years or older can be given a corrective order. However, sections 14 (d, e), 26.2 (a) stipulate a corrective order as a measure for young persons: a young person being aged 14 to 17.

OMCT would request that the committee request further clarification on the legislative questions and would recommend that appropriate sections be amended.

Children in need of protection outside the familial environment [Art. 19.2 &25]

Paragraph 56 of the State report which deals with "*Children deprived of a family environment*", states that "*Communities sometimes take this (providing for a child) as their responsibility while social welfare offices at local, State and federal levels come in to offer assistance.*"

Domestic legislation

Part V of the Children and Young Persons Law section 26 describes situations where a child would be in need of care and protection and offers State solutions to their situations.

For example, section 26 and 14 of the Children and Young Persons Law stipulate similar treatment for juveniles in need of protection and care, and children and young persons charged with offences: Sending the child to an "*approved institution*" through a "*corrective order*" (section 26 [2] [a] [i] and section 14 [e]).

Observations

It is unclear from the report what difference there is between the institutional measures outlined for children in need of care and protection and those charged with an offence.

It would appear that children deprived of a familial environment are to all intensive purposes being detained in corrective centres.

Recommendations

OMCT would urge the committee to seek clarification from the government on this issue of differing treatment for children in conflict with the law and those in need of protection and in particular the reference made to a "*corrective order*" with regard to the latter.

Administration of Juvenile Justice

OMCT is concerned over insufficient information relating to the administration of justice involving minors. The sections describing de facto conditions in police detention and the use of torture are indicative of the seriousness of the problems.

Domestic Considerations

According, to the rule by decree, crimes committed in the past can be retroactively tried. This is contrary to Article 2.a of the CRC.

According to the government report, paragraph 95(e), it is stated that:

"except for decisions of the armed robbery tribunal, decisions of other criminal courts maybe appealed against a higher court".

Observations

This stipulation is clearly in contradiction with article 40.2.bV of the CRC.

Furthermore the report makes no mention of the effective respect for human rights and fundamental freedoms under all circumstances of the privacy of the child during the court case foreseen by Article 40.2.bVII

The report of the government makes no clarification of the validity of a statement given by a child whilst under interrogation by the police. OMCT is particularly concerned given the de facto conditions in police stations which would appear to encourage circumstances of ill treatment of the child.

Juvenile Courts

While juvenile courts exist there seems to be no obligation that a child be tried in such a court. Section 3 of the Children and Young Persons Law evokes the existence of:

"a court of summary jurisdiction" and section 6 (3) states that *"(…) where in the course of any proceedings in any court other than a juvenile court, it appears that the person charged or to whom the proceedings relate is under the age of 17 years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case."*

Equally, as has been seen earlier in the section on detention, the existence of the State Security (Detention of Persons) Decree provides yet another court where children will be offered no legal guarantees.

Article 40.3 of the Convention on the Rights of the Child encourages States to promote the establishment of institutions specific for juvenile offenders. Section 6 (1) of the Children and Young Persons Law establishes juvenile courts for: *"the purpose of the hearing and determination of cases relating to children or young persons (…)".*

Recommendations

OMCT urges the Committee to request that the government:

Provide further information on the retroactivity of Decrees;

Provide more detailed information on the rights of the child to privacy during trials;

Provide details regarding the suspension of the child's right to appeal before the armed robbery tribunal;

Provide details on the validity of statements given by children during police interrogation;

Outline what measures the government will take to ensure that all children have the right to be heard before a children's court.

Other areas of concern
De Facto Conditions for Almajiris

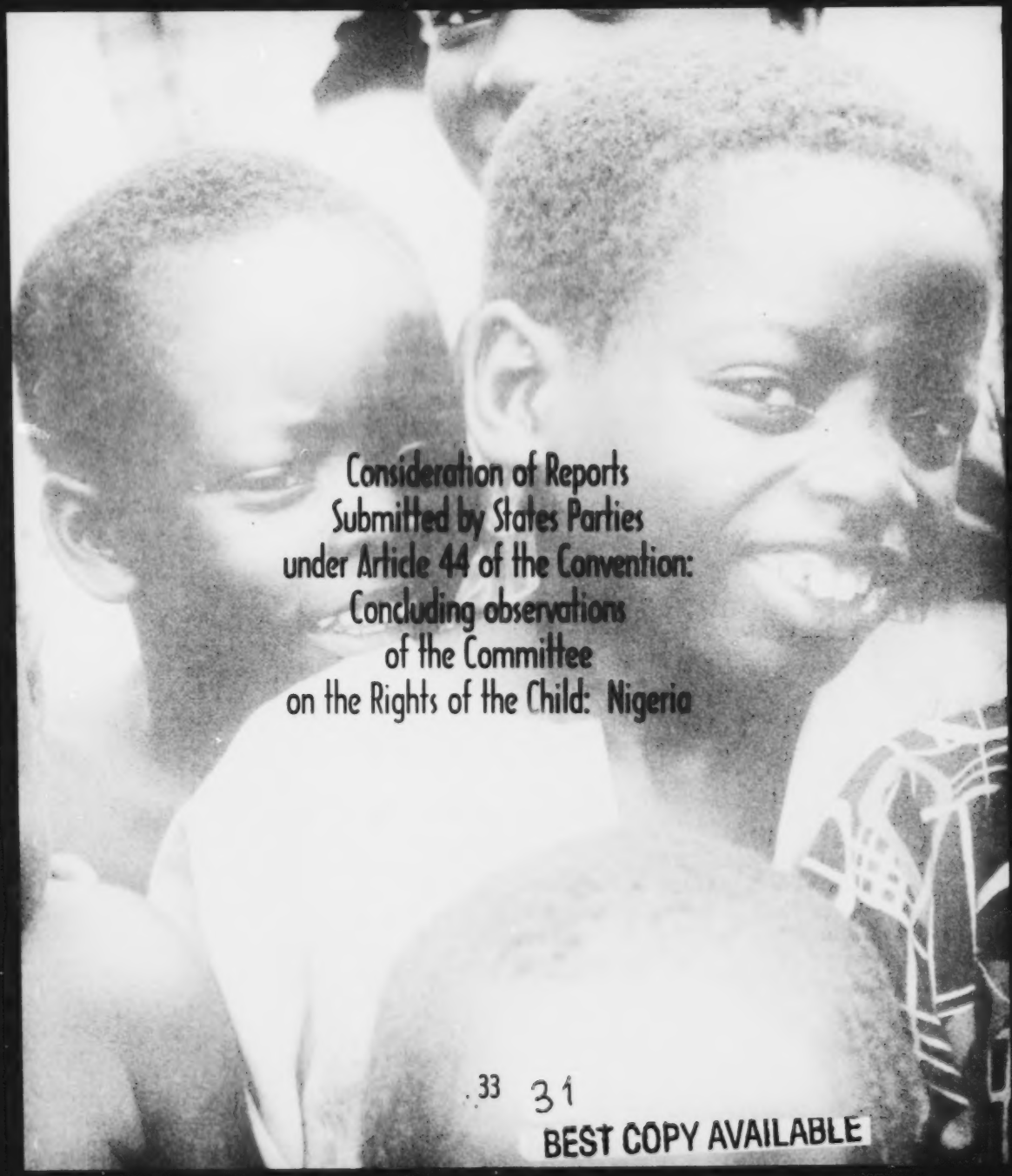
Another area of concern is the practice of "*Almajiris*" which consists of parents entrusting their children to strangers for religious teaching; these strangers then force the children to be beggars. They live in squalid conditions and are generally neglected.

Are the parents of these children punishable under sections 301 and 372 of the Criminal Code or are they enjoying "*impunity*" because this practice may be considered as a religious tradition? Furthermore, what is the situation of these children from the legal, cultural and social point of view (particularly with respect to education, assistance, etc.) since section 26 of the Children and Young Persons Law provides that a child:

"(h) who is found begging or receiving alms, whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise, or is found in any street, premises, or place for the purpose of so begging or receiving alms; or (i) who accompanies any person when that person is begging or receiving alms (...)"

may be brought before a juvenile court and among other results be sent to an "*approved institution*".

If a child in a situation such as this is sent to an "*approved institution,*" are they provided with educational, social and medical assistance? If so, is this treatment considered acceptable in the best interest of child.



Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding observations of the Committee on the Rights of the Child: Nigeria

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1. The Committee considered the initial report of Nigeria (CRC/C/8/Add.26) at its 321st to 323rd meetings (See CRC/C/SR.321-323) held on 26 and 27 September 1996 and, at the 343rd meeting, held on 11 October 1996, adopted the following observations.

A. Introduction

2. The Committee expresses its appreciation to the State party for sending a high-level delegation to discuss the report.

The Committee notes that the report, although following the thematic structure for reporting set out in the general guidelines, was incomplete in its appreciation of the situation of children throughout the country. The Committee wishes to emphasize that the purpose of reporting is to indicate not only the measures adopted but also the progress made since the entry into force of the Convention and priorities identified for action, as well as the difficulties encountered in guaranteeing the rights provided for in the Convention.

B. Positive factors

3. The Committee welcomes the establishment of the National Human Rights Commission. The Committee also takes note of the establishment in 1994 of the National Child Rights Implementation Committee, inter alia to ensure the popularization of the Convention on the Rights of the Child and the OAU Charter on the Rights and Welfare of Children; to review continuously the state of implementation of the Convention; to develop specific programmes and projects that will enhance the status of the Nigerian child; to collect and collate data on the implementation of the rights of the child; and to prepare and submit reports on the implementation of children's rights for the United Nations and the Organization of African Unity.

4. The Committee notes that the Government of Nigeria has prepared a national plan of action in response to the recommendations and goals enunciated in the Declaration and Plan of Action adopted by the World Summit for Children in September 1990.

5. The Committee appreciates the importance attached by the State party to improving the status and situation of women and the positive role this can play in contributing to the measures required to address the problems facing children in general and the girl child, in particular.

C. Factors and difficulties impeding the implementation of the Convention

6. The Committee recognizes that the situation in Nigeria is characterized by particular economic and socio-cultural complexities. It notes that Nigeria is the most populated African country and that it is multi-ethnic in composition with over 250 ethnic groups which have diverse cultures and languages. It is additionally noted that the persistence of certain harmful traditional practices and customs has had a negative bearing on the enjoyment of the rights guaranteed under the Convention.

D. Principal subjects of concern

7. The Committee expresses its deep concern that the rights of the child as provided for in the Convention have yet to be invested with effective legal status in Nigeria as the draft children's decree remains to be finalized and adopted. The Committee, while noting the very positive development represented by the drafting and revision of a children's decree, expresses its regret that a copy of the draft decree in its entirety was not made available to the Committee. The lack of such enabling legislation raises serious doubts as to the priority previously given to the rights of the child in Nigeria. The Committee raises these points in the light of the conclusion it reached from examining the State party?s report and its dialogue with the delegation that certain legislation currently in force in Nigeria in relation to the rights of the child is not in conformity with various articles of the Convention, including article 1.

8. The Committee is concerned about the compatibility of customary law and laws passed at the regional and local levels and their application with the principles and provisions of the Convention.

9. The Committee notes with concern the apparent absence of adequate mechanisms for the determination of appropriate indicators as well, as for the collection of statistical data and other information on the status of children for use as bases for designing programmes to implement the Convention.

10. With respect to the implementation of various principles and provisions of the Convention, in particular those set out in its articles 3 and 4, the Committee is concerned that the impact of economic policy, as at present designed and

pursued, may have led the Government to resort, on a more regular basis than it would wish, to temporary ad hoc funding measures to cover significant shortfalls in income for the realization of particular programmatic objectives. The Committee is concerned about the gap between the country's gross national product and the insufficiency of resources being made available for the implementation of the rights of the child, in particular in the areas of primary health care, primary education and other social services, as well as the protection of the most disadvantaged groups of children. Equally, the Committee remains concerned about the effectiveness of measures at present in place to give priority to projects for the implementation of the rights of the child, as well as to reduce any disparities between and within regions as regards the availability of resources for the realization of such projects.

11. The Committee is concerned that considerable progress is still required towards ensuring that all adults and children are aware of the rights of the child as contained in the Convention. Additionally, the Committee is concerned at the lack of training and education about the Convention for individuals working with or for children, such as police officers, chiefs of police, staff in institutions where children are detained, leaders at the community and ward levels and other government officials, as well as judges, lawyers, teachers, health workers and social workers.

12. The Committee is also concerned that the general principles of the Convention, as laid down in its articles 2, 3, 6 and 12, are not being applied and duly integrated into the implementation of all articles of the Convention. Concern is expressed at the status and situation of girl children and the insufficiency of measures to prevent and combat discrimination practised against them. Of equal concern to the Committee is the apparent absence of pro-active measures to combat discrimination against disabled children, children belonging to ethnic minorities and children born out of wedlock.

13. In the light of the provisions of article 3 of the Convention, the Committee is of the view that the Government has not yet fully developed a procedure to ensure that the "*best interests of the child*" guide

the decision-making process. Consideration of the impact of various policy options on the enjoyment of the rights of the child should form an integral part of this process.

14. It is also the view of the Committee that traditional attitudes concerning the role children should play in the family, school, the community and society in general may be frustrating efforts to achieve the fuller participation of children, as envisaged in articles 12 and 13 of the Convention.

15. The Committee is concerned about the persistence of early marriage, child betrothals, discrimination in inheritance, widowhood practices and other harmful traditional practices. These practices are incompatible with the principles and provisions of the Convention. More particularly, the continuation of the practice of female genital mutilation is of deep concern to the Committee; although measures are being taken to address this practice, the Committee is of the view that they are insufficient. The problems of violence against children and the physical abuse of children in the family, in schools, in the community and in society are also of major concern to the Committee.

16. The Committee views the trend of rising child mortality rates as a matter of deep concern. Despite the Government's stated policy of supporting primary health care programmes over those providing curative health care, the Committee views the access to quality health care services as unsatisfactory. Equally, the effectiveness of measures undertaken to avoid regional variations in the provision of health care services and medical supplies remains a cause of concern to the Committee. The Committee is also concerned about the problems encountered in providing access to safe water.

17. In view of the considerable incidence of poverty in the country and the insufficiency of the minimum wage in meeting basic needs, the Committee views the absence of social support to families, including single-parent families, especially female-headed households, as a matter of serious concern.

18. The State party's recognition of the importance of promoting education for all as a tool to improve the situation of

children, especially girl children, is welcomed. However, the Committee remains concerned about the effectiveness of measures being taken to harmonize policy priorities in this area with adequate budgetary allocations.

19. The Committee expresses its regret that insufficient measures are being taken to address the problems of child abuse, including sexual abuse, and the sale and trafficking of children, child prostitution and child pornography.

20. It is the view of the Committee that current legislation with regard to the administration of juvenile justice and the institutionalization of children does not appear to conform to the principles and provisions of the Convention. In this regard, the provisions of national legislation which permit sentencing to capital punishment are incompatible with the provisions of article 37 (a) of the Convention.

21. The Committee is also concerned that the provisions of national legislation by which a child may be detained at Her Majesty's Pleasure may permit the indiscriminate sentencing of children for indeterminate periods. Furthermore, the Committee is worried about the provisions of national legislation which provide for the detention of children assessed to be "*beyond parental control*". The possibility that abandoned children or children living and/or working on the street would have such measures applied against them is of special concern to the Committee. It is the view of the Committee that these legislative measures do not appear to be compatible with the provisions of article 37 (b) of the Convention, which lays down that the arrest, detention or imprisonment of a child shall only be used as a measure of last resort and for the shortest appropriate period of time. Equally, the Committee is concerned about the application in practice of the provisions of section 3 of the Children and Persons Law may lead to the arbitrary detention of children, which is incompatible with the provisions and principles of the Convention.

22. The Committee notes with serious concern the low age of criminal responsibility for children in Nigeria, at present seven years of age, and that children even under the age of seven may be brought

before the courts. The Committee is also very much concerned about the adequacy of safeguards for all children brought before the courts, required under article 40 of the Convention.

23. Moreover, the Committee is seriously concerned about the conditions in places of detention for children, especially with regard to children's access to their parents, the medical services and educational programmes offered and the services in place to facilitate the recovery and rehabilitation of children. It is equally concerned about the inappropriateness and ineffectiveness of measures for the supervision and monitoring of the situation of children in detention, including for dealing with children's complaints of abuse or ill-treatment, and the lack of measures to ensure that these complaints are addressed in a serious and expeditious manner.

24. Furthermore, the Committee is deeply alarmed that the necessary safeguards against the excessive use of force by law enforcement officials or anyone else acting in this capacity are undermined by the provisions of section 73 of the Criminal Code. This may give rise to the violation of children's rights, including their right to life, and leads to impunity for the perpetrators of such violations. Therefore, it is the view of the Committee that the above-mentioned provisions of the Nigerian Criminal Code are incompatible with the principles and provisions of the Convention.

25. The Committee is of the view that insufficient measures have been taken for the implementation of article 32 of the Convention to prevent and combat the economic exploitation of children.

E. Suggestions and recommendations

26. The Committee recommends that the Government consider, on an urgent basis, the adoption of the children's decree, drafted in conformity with the principles and provisions of the Convention. The Committee welcomes the willingness of the delegation of the State party to provide the Committee with information regarding progress in relation to the draft children's decree and to submit to the Committee, as soon as possible, a copy of the full text of the draft decree.

27. The Committee also recommends that the State party, in undertaking a

comprehensive review of the national legal framework and its conformity with the principles and provisions of the Convention account, should also take into account the compatibility of the system of customary law and regional and local laws with the articles of the Convention.

28. The Committee strongly recommends that the Government consider the possibility of undertaking a review of the effectiveness of measures being taken to implement the provisions of article 4 of the Convention in respect of the allocation of resources to the maximum extent possible for the implementation of the economic, social and cultural rights of the child. It is further suggested that such a review should be undertaken in the light of the priorities for the implementation of the Convention identified during the discussion of the report of Nigeria.

29. The Committee appreciates the willingness of the State party to undertake further measures to ensure that effective mechanisms are put in place for the implementation and monitoring of the Convention at all levels of government including the ward level, through the mandate given to the Ministry of Women Affairs and Social Development. The Committee notes that the task of cooperating and coordinating with other mechanisms at different levels with regard to the monitoring of the implementation of the rights of the child is a challenging one and expresses the hope that further discussions within government circles and throughout the various levels of government on how best to achieve the priority objectives be undertaken on an urgent basis.

30. The Committee shares the view of the State party that effective education and awareness raising among all children concerning their rights should be undertaken and that an evaluation of the extent of awareness of the rights of the child among children and adults should be carried out. The Committee would like to suggest that such an awareness-raising programme should be extended to all adults and professionals working with or for children.

31. The Committee recommends that priority be given to the development of mechanisms for collecting statistical data and indicators disaggregated by gender, and rural/urban and ethnic origin as the bases for designing programmes for children.

32. It is the Committee's view that further efforts must be undertaken to ensure that the general principles of the Convention, in particular "*the best interests of the child*" and the participation of children, not only guide policy discussions and formulation, and decision-making, but also are integrated into the development and implementation of all projects and programmes.

33. The Committee wishes to emphasize that the general lack of financial resources cannot be used as a justification for neglecting to establish social security programmes and social safety nets to protect the most vulnerable groups of children. Accordingly, it is the opinion of the Committee that a serious review should be undertaken to determine the consistency of the economic and social policies being developed with the State party's obligations under the Convention, in particular articles 26 and 27, especially with respect to the establishment or improvement of social security programmes and other social protection.

34. The Committee recommends that as a high priority further measures be undertaken to prevent and combat discrimination, especially on the grounds of gender and ethnic origin, and differential access to services between the rural and urban population.

35. While acknowledging the State party's commitment to evaluating the effectiveness of policy implementation for disabled children, the Committee recommends that such policy should be reviewed to ensure that it reflects the general principles of the Convention, particularly as regards preventing and combating discrimination against disabled children.

36. The Committee shares the view of the State party that major efforts are required to address harmful practices such as early marriage, betrothals of children, female genital mutilation and abuse of children in the family. The Committee recommends that all legislation should be reviewed to ensure its compatibility with the eradication of such violations of children's rights and that campaigns be developed and pursued with the involvement of all sectors of society with a view to changing attitudes in the country as to the non-acceptance of harmful practices. As far as female

genital mutilation is concerned, all action necessary to eradicate this violation of children's rights must be taken on a priority basis. Public awareness and information campaigns must support education and advice on other family matters, including equal parental responsibilities and family planning in order to foster good family practices in line with the principles and provisions of the Convention.

37. The Committee recommends that improvement of access to and the quality of primary health care services be urgently undertaken. Major efforts to ensure the equal distribution of health services and medical supplies between and within regions are required immediately.

38. The Committee encourages the State party in its efforts to harmonize the informal and formal education systems, particularly with respect to the application of a national curriculum within all schools. Further steps should be taken to develop guidelines for the participation of all children in the life of the school in conformity with the principles and provisions of the Convention. The Committee encourages the Government to implement measures to improve school enrolment and school retention, especially for girls. A system for the regular evaluation of the effectiveness of these and other educational measures must be ensured. Measures must also be taken to ensure that discipline in school is administered in conformity with the provisions of article 28, paragraph 2 of the Convention. In addition, the Committee recommends that, in the light of the provisions of article 29 of the Convention and the United Nations Decade for Human Rights Education, the State party incorporate education on the rights of the child in school curricula, paying special attention to promoting tolerance among all peoples and groups. The State party may wish to consider requesting further international cooperation for the implementation of the measures identified for the application of the provisions of articles 28 and 29 of the Convention.

39. The Committee recommends that national legislation be brought into conformity with the provisions of articles 37, 39 and 40 of the Convention. National legislation must comply with the principle that capital punishment cannot be

applied to children under the age of 18. The Committee also recommends that article 73 of the Criminal Code be abrogated and section 3 of the Children and Young Persons Law be reviewed as to its conformity with the Convention. The Committee welcomes the information provided by the State party that the new draft children's decree will set the age limit for criminal responsibility at 18. However, in view of the clarification provided regarding the system to be set in place, the Committee wishes to emphasize that the legal safeguards provided for in the relevant principles and provisions of the Convention, including those of article 40, must be provided to all children, whether the deprivation of their liberty results from the application of a welfare or a criminal procedure.

40. It is also the view of the Committee that the best interests of the child should prevail in proceedings concerning child victims of parental abuse, especially in deciding whether parents have the right to represent their child in such cases. Finally, the Committee wishes to emphasize that the Convention requires that detention be a measure of last resort and for the shortest appropriate period of time. The institutionalization and detention of children must be avoided as much as possible and alternatives to such practices must be developed and implemented. The Committee recommends that measures be taken to establish an independent system for monitoring the situation of children in detention, whether in prisons or welfare institutions.

41. In view of the various concerns raised by the Committee with respect to the implementation of article 32 of the Convention, it wishes to highlight the importance of the State party ensuring that all children have access to health care, that education be made compulsory as a measure to prevent the economic exploitation of children and that further measures should be undertaken to combat exploitation, such as that of child domestic workers, including legislative measures to ensure the effective protection of the child against the performance of any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or full and harmonious development.

42. In the light of articles 34 and 35 of the Convention, the Committee encourages

the State party in its efforts to follow up at both the national and regional levels on the measures required to prevent and combat the sexual exploitation of children.

43. The Committee recommends that further measures be taken with a view to ensuring the physical and psychological recovery and rehabilitation of the child victims of abuse, neglect, ill-treatment, violence or exploitation, in accordance with article 39 of the Convention.

44. The Committee recommends that the State party make widely available to the public its report, the records of the discussion of that report in the Committee and the concluding observations adopted by the Committee.

The World Organisation Against Torture (OMCT) wishes to extend its deepest gratitude to the Hans Wilsdorf Foundation, the Fondation de France and Misereor for their support to the Children's Programme.

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